



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

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BUILDING DEPT.
TOWN OF BROOKLINE
Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080049

Petitioners, Benjamin Pen-Hau Chang and Amber Chan, applied to the Building Commissioner for permission to construct a sundeck with stair enclosure on their roof and a deck on the rear of their home per plans at 342 Tappan Street. The application was denied and an appeal was taken to this Board.

On November 20, 2008 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed December 11, 2008 at 7:00 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on November 20 and 27, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **CHANG PEN-HAU BENJAMIN and CHAN AMBER**
Location of Premises: **342 TAPPAN STREET BRKL**
Date of Hearing: **12/11/2008**

Time of Hearing: 7:00 p.m.

Place of Hearing: Main Library, 2nd floor

A public hearing will be held for a variance and/or special permit from:

- 1) 5.20, Floor Area Ratio; Variance Required.
- 2) 5.43, Exceptions to Yard and Setback Regulations; Special Permit Required.
- 3) 5.60, Side Yard Requirements; Variance Required.
- 4) 5.62; Fences and Terraces in Side Yards, Variance Required.
- 5) 8.02.2; Alteration or Extension; Special Permit Required of the Zoning By-Law to construct a sundeck within the rear yard and to construct a stairway access with penthouse enclosure and deck containing screening and trellis structures on the roof per plans at 342 TAPPAN STREET BRKL.

Said Premise located in a M-2.0 (apartment house) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members, Kathryn Ham and Rob De Vries. The petitioners, were represented by their attorney, Attorney Diane Gordon, Ten Winthrop Square, Boston, MA 02110.

Petitioners Benjamin Chang and Amber Chan were also present with their son Harrison and their architectural team led by Colin Flavin A.I.A. of Flavin Architects.

Ms. Gordon described the site and neighborhood as follows:

342 Tappan Street is a two family townhouse in a row of seven townhouses located one block south of Beacon Street near Washington Square. Built in 1890, the four-story structure was originally designed for single-family use. The Flemish architectural style of these townhouses consists of a fieldstone and yellow brick façade and very steep slate gable roofs with hipped dormers and cross gables with a flat area on the back of the roof. An access alley exists to the rear of the lot, and the rear abutter is the parking lot for Star Market at 1717 Beacon Street. The surrounding neighborhood consists of row-type apartments, attached townhouses, and some larger residential structures, including Regency Park. Some of the other buildings in this row of townhouses, including 336 Tappan Street, have been granted relief to construct similar roof stairwell penthouses and sundecks.

The zoning relief is as follows:

Section 5.20 – Floor Area Ratio

Section 5.60 – Side Yard Requirements

Section 5.62 – Fences and Terraces in Side Yards

	Required/Allowed	Existing	Proposed	Finding
Floor Area Ratio	2	2.57	2.62	Variance*
South Side Yard Setback	6'	n/a	1'5"	Special Permit**/Variance
North Side Yard Setback	6'	n/a	0'	Special Permit**/Variance

*Under Section 5.22.3.a.1 The building is located at an address in a district with a FAR greater than 1.5 and is ineligible for a special permit.

**Under Section 5.43, the Board of Appeals may waive yard setbacks if a counterbalancing amenity is provided. The applicant has indicated they will be doing lattice trellis work with climbing plants and rooftop landscaping as counterbalancing amenities.

According to attorney Gordon, the project requires the following zoning relief:

- (i) Special Permit for Side Yard Requirements (Section 5.60);
- (ii) Special Permit for Fences and Terraces in Side Yards (Section 5.62);
- (iii) A Variance under Section 5.20 for a proposed Floor Area Ratio of 2.62 which is in excess of the permitted Floor Area Ratio of 2.0 (existing is 2.57) and
- (iv) A Special Permit under Section 8.02.2 for alteration of this pre-existing non-conforming structure.

With respect to the dimensional special permits (Sections 5.60 and 5.62) required, Ms. Gordon

observed that that the requirements of Sections 5.43 Exceptions to Yard and Setback Regulations and 9.05 Conditions for Approval of Special Permit of the By-Law can be met. Specifically, under Section 5.43, it is provided that this Board may permit the substitution of such other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the Regulations of the By-Law.

As counterbalancing amenities, the petitioner will provide a landscape buffer for both of the decks with attractive privacy screens and trellis work. The iron and mahogany railing on the kitchen balcony is an attractive substitute for the fire escapes that are typically on the nearby rear facades.

Ms. Gordon described the petitioner's situation and proposal for the Board. The Chang family has no usable open space and wishes to bring an existing roof deck and stairway into compliance with all state and local codes to provide some open space. To do this, they must remove the existing ladder style stairway and hatch door and replace it with a more gradual and safer stairway with a penthouse enclosure that would be approximately 8'5" high and project approximately 3'1" above the ridgeline of the roof. Sliding glass doors will provide access to the deck. The new habitable space totals 99 square feet. A trellis with year round plantings will provide a screen for abutters. It is the addition of this penthouse enclosure to meet safety codes that adds floor area and causes the need for variance relief. Lighting for the deck will be low and existing fixtures will be removed.

Also being proposed is a balcony off the rear first floor kitchen that would face the Star Market parking lot. It will be 18'7" long and 7'2" wide. This outside area would be an accessible seating area for the family and for petitioner's ailing grandmother and accessed by a new out-swinging French door. Petitioner is willing to enclose the sides of this balcony with wood lattice screens if the immediate abutters continue to prefer that as a buffer. The screen will be 6'2" high on the sides of the balcony and 3'6" high on the front.

Attorney Gordon then addressed the grounds for a Variance pursuant to Section 5.20 Floor Area Ratio. She suggested that there were two (2) bases for relief pursuant to Massachusetts General Laws Ch. 40A, Section 10, one based on the unique shape of the Chang's lot and the second, on the unique shape of the structure.

As for the shape of this lot, Ms. Gordon related the unusual history of 342 Tappan Street. In the late 1880's, Eugene Knapp of Boston decided to experiment with creating the precursor to a cluster zone/condominium style development called Beaconsfield Terraces with attached row houses that were built to their lot lines and with no usable open space. To compensate he provided a six (6) acre park, tennis courts, a 'casino' for dining and socializing, horse stables and children's play areas to be shared in common by the row house owners. The experiment was not particularly successful in large part because homeowners moving to the suburbs expected to have some land for themselves. The large common area described above was sold off and developed leaving the Beaconsfield Terraces with no usable open space held in common or individually.

As for the Chang's and their immediate neighbors, they are left with long narrow lots built to their lot lines and with no usable open space for children like Harrison. As stated above, the kitchen balcony would provide accessible open space for Harrison and Ms. Chan's grandmother who cannot negotiate stairs, and is expected to live with the Chang's.

It is also the unique shape of the structure that causes substantial hardship to the petitioner. The grouping of seven (7) houses that Mr. Knapp called Fillmore Terrace was the earliest example of Flemish Revival design in Brookline and included ornate accoutrements such as turrets, gables and slanted roofs, making the roof area as well as other parts of the structure challenging to use.

After completing her presentation, Ms. Gordon called upon Colin Flavin to further describe the unique character of this Flemish design structure and to answer questions from the Board members. In particular, Mr. Flavin noted that the proposed roof deck head house for the stair will not be visible from Tappan Street. Also noted was his intention to keep deck lighting low and to remove existing elevated lighting.

The Chair asked if there was anyone present in opposition or in favor of this proposal. No one appeared and Ms. Starr acknowledged receipt of letters in support from all of the abutters at 344 Tappan Street and 340 Tappan Street, the buildings that are most affected by this project.

The Board then heard from the Building Commissioner Michael Shepard who advised that he had carefully reviewed the plans and confirmed that the penthouse access is what added to the petitioner's Floor Area as it is considered habitable space. He also confirmed that the structure lacks any open space and by improving this roof deck said they "are doing a good thing". Commissioner Shepard supports the project with the conditions suggested by the Planning Board.

Courtney Starling, planner, provided the comments of the Planning Board as follows:

The Planning Board has no objection to this proposal to construct a rear sundeck, although it has some concerns about the impact on the abutter's view. The balcony will block a window in the neighboring bay with the 6'2" privacy screen and trellis; however, the abutter has not objected to the deck. The Planning Board also has no objection to the roof stairwell penthouse if the Board of Appeals finds that the statutory requirements for a variance are met. The roof deck should not negatively impact any abutters because to the rear is an alley and a supermarket; the stairwell penthouse, which creates the relief needed for the Floor Area Ratio, is required to meet the current building code.

Therefore, the Planning Board voted (4-1) to recommend approval of the plans by Flavin Architects dated October 3, 2008 for the first floor balcony, and if the Board of Appeals should find the statutory grounds for a variance are met, the Planning Board recommends approval of the roof deck, subject to the following conditions:

- 1. Prior to the issuance of a building permit, a final landscaping plan as a counterbalancing amenity shall be submitted for review and approval to the Assistant Director of Regulatory Planning.**
- 2. Final elevations indicating all materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:**
 - 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final**

elevations of the roof deck and balcony stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable and there are grounds to grant a Variance pursuant to Section 5.20 and Special Permits pursuant to Sections 5.43 and 8.02.2 subject to those conditions set forth below.

As grounds for the Variance, the Board is satisfied that 342 Tappan Street is a unique structure and a uniquely shaped lot not affecting generally the zoning district: that the shape of the lot allows for no usable open space unlike lots generally in the zoning district and thinks this creates substantial hardship for the petitioner. The Board makes the following findings pursuant to Section 5.20, 5.43, 8.02.2 and 9.05 of the Bylaw:

1. The specific site is an appropriate location for such a use, structure or condition in light of the fact that the footprint of the building will not be increased and the decks will provide some usable open space where before there was none.
2. The use as developed will not adversely affect the neighborhood and, in fact, the kitchen deck will be an attractive addition to the rear alleyway.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The development as proposed will not have any adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants a Variance pursuant to Section 5.20 and Special permits pursuant to Sections 5.43 and 8.02.2 of the By-Law subject to those conditions set forth below.

1. Prior to the issuance of a building permit, a final landscaping plan as a counterbalancing amenity shall be submitted for review and approval to the Assistant Director of Regulatory Planning along with a lighting plan with particular attention paid to minimizing the affect of the lighting on neighboring properties.
2. Final elevations indicating all materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations of the roof deck and balcony stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Accordingly, the Board voted to grant the requested relief .

Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Filing Date: December 19, 2008

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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